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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/366,339	12/28/94	KEESMAN G	PHB-33-946

26M2/1127

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EXAMINER	
RAO,A	
ART UNIT	**PAPER NUMBER**
2615	10

DATE MAILED: 11/27/96

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/366,339	Applicant(s) Keesman
	Examiner A. Rao	Group Art Unit 2615

☒ Responsive to communication(s) filed on *Sep 4, 1996* .

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-9* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-9* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____ .

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Part III DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed on 7/17/96 fails to comply with 37 CFR § 1.98(a)(2), which requires a legible copy of each U.S. and *foreign* patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been completely considered as to the merits.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2 and 5 rejected under 35 U.S.C. § 102(b) as being anticipated by Lhuillier et al, as set forth in the Office Action mailed on 5/2/96.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in

> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

5. Claims 3-4, and 6-9 are rejected under 35 U.S.C. § 103 as being unpatentable over Lhuillier in view of Reininger et al, as set forth in the Office Action mailed on 5/2/96.

Response to Amendment

6. Applicant's arguments filed on 12/28/94 with respect to claims 1-9 have been fully considered but they are not deemed to be persuasive.

The Applicant presents two arguments concerning the Examiner's respective rejections of claims 1, 2, 5 under 35 U.S.C. § 102(b) as being anticipated by Lhuillier et al. (hereinafter Lhuillier), and of claims 3-4 and 6-9 as being unpatentable over Lhuillier in view of Reininger et al., as set forth in the Office Action mailed on 5/2/96.

Firstly, the Applicant contends that Lhuillier is concerned with the a different problem that the invention and does not include certain features of Applicant's invention, the

limitations on which the Applicant relies are not stated in the claims. A careful examination of claims 1-9 has failed to associate a significant "tunable delay" limitation with the changing of the second bit-rate (Page 4, The Invention, lines 15-16) or a maintaining a "constant system delay" (Page 5, Art Rejection - Lhuillier, lines 12-13) in a like manner. At best, the only factor in determining constancy of the second bit-rate is the first bit-rate, as recited in the claims. Lhuillier is clearly directed towards the regulation of the second bit-rate as a result from the first bit-rate such that in adherence to a constant factor. Therefore, it is irrelevant whether the reference includes those features or not.

Secondly, the Applicant suggests asserts that Lhuillier does not change the second rate by using an inverse relation the first bit-rate. The Examiner respectfully disagrees. Firstly, in analyzing the terms in question the Applicant has restated the obvious concerning the overall quality as being constant (Lhuillier: column 4, equation 3, and column 3, lines 34-38). The inverse relation is formed with the denominator of equation (3), $d_i(1 - \mathbf{T}E_i)$. The current block quality is changed inversely in relation to E_i (Lhuillier: column 4, lines 40-46), wherein E_i is a residual data quantity representing the first bit-rate (Lhuillier: column 3, lines 26-34), and is used by the regulation circuit to determine the second bit-rate (Lhuillier: column 3,

15-35). For the reasons discussed above, the Examiner maintains the grounds for rejection.

Lastly in discussing claims 3-4 and 6-9 and the Examiner's combination in using both the Lhuillier reference with the secondary Reininger reference, the Applicant appears to revisit the issue of using an inverse relation to derive the second bit-rate, as discussed above. However, the Applicant clearly discloses the use of an "inverse percentage relation" for determining the secondary read-out bit-rate. Since E_i is a residual quantity of bits, which varies within a fixed domain (Lhuillier: column 4, lines 40-46), and is used inversely, it functions as percentage relation (Lhuillier: column 4, lines 15-25), as in claims.

For the reasons discussed above, the Examiner maintains the respective grounds of rejections of claims 1, 2, 5 under 35 U.S.C. § 102(b) as being anticipated by Lhuillier et al. (hereinafter Lhuillier), and of claims 3-4 and 6-9 as being unpatentable over Lhuillier in view of Reininger et al., as set forth in the Office Action mailed on 5/2/96.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS

ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Haskell discloses a timing recovery apparatus for VBR video on ATM networks. Rao discloses a method for configuring a statistical multiplexer to dynamically allocate communication channel bandwidth. Dangi discloses a video and audio multiplex transmission system (figure 4).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anand Rao whose telephone number is (703) 305-4813.

ASR
asr
November 18, 1996

TOMMY P. CHIN
SUPERVISORY PATENT EXAMINER
GROUP 2800